

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6613 OF 2023

Mr. Ganesh Sidhanth Khilare
Age 46 years, Occu. Service,
R/o Kunnur Taq Akkalkot
Dist - Solapur

.... Petitioner

Versus

SNEHA
NITIN
CHAVAN

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1. The State of Maharashtra
Through Education Department
Mantralaya Mumbai.
 2. The Deputy Director of Education,
[Secondary] Pune Region Pune
 3. The Education Officer [Secondary]
Zilla Parishad, Solapur,
 4. Vivek Prathamik Vidyalay Pandharpur
Through its Head Master,
At Pandharpur Dist. Solapur.
 5. Datta Vidya Mandir Suste
At Village Suste Tal Pandharpur,
Dist. Solapur.
 6. Shri. Dadasaheb Somdale Shikshan,
Prasarak Mandal Pandharpur through
Its Secretary/president having office
C/o Vivek Vardhini Vidyalay, Pandharpur,
Dist. Solapur.
- Respondents

Mr. Ajay Joshi for the Petitioner.
Mr. S.B. Kalel, AGP for the Respondent/State.

**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 20 MARCH 2024

JUDGMENT (Per M.M.SATHAYE, J.)

. Rule. Learned AGP waives service for Respondent No.1 to 3/State. Learned counsel for the Petitioner states that Respondent Nos. 4 and 5 (Management) are supporting the Petitioner's case till today and there is no internal dispute in the Management-Trust. We proceed on the basis of said statement. Rule made returnable forthwith. Taken up for final disposal by consent.

2. This is a typical case where at the stage of entering the name of school staff in *Shalarth ID* system, the approval to his/her appointment is considered all over again by the education authority.

3. Bare minimum facts are necessary to be stated. The Petitioner-employee working with Respondent No.4-school run by Respondent No.5-Educational Institute, is challenging the impugned orders dated 18 November 2022 and 6 December 2022 passed respectively by Respondent No.3-Education Officer (Secondary), Zilla Parishad, Solapur and Respondent No.2-the Deputy Director of Education, Pune Region, Pune. The effect of impugned orders is that the proposal of entering the Petitioner's name in *Shalarth ID* system is rejected. It appears that under the impugned order dated 18

November 2022, the Education Officer has recommended to the Deputy Director of Education to cancel the approval granted to the Petitioner on 6 July 2022, stating that the initial approval was granted due to 'inadvertence'. It further appears that based on said order/communication dated 18 November 2022, the Deputy Director of Education has issued the final impugned order dated 6 December 2022 refusing to enter the Petitioner's name in *Shalarth ID* system.

4. Learned counsel for the Petitioner submitted that impugned order dated 18 November 2022 passed by the Education Officer amounts to reviewing the order dated 6 July 2022 granting the approval in the first place, which is beyond the scope of power exercisable by the said Authority. He further submitted that even the impugned order dated 6 December 2022 refusing to enter the Petitioner's name in *Shalarth* system amounts to reviewing the decision about approval, which is not permitted under the settled law in respect thereof. He has relied upon the Judgment and Order dated 21 February 2022 passed by the co-ordinate Bench of this Court in the case of *Amol Baban Sangar V/s. The State of Maharashtra, through its Secretary, School Education and Sports Department and Ors.*¹

5. Learned AGP was at pains to support the impugned Orders, but could not distinguish the present case from that of the case law

¹ 2022 (2) Bom C.R. 484

relied upon.

6. We have considered the submissions and perused not only the judgment relied upon by the Petitioner, but other relevant judgments also. This situation is already considered in the past, as explained below. We follow the same view.

- a) In *Shivani Deshpande Vs. State of Maharashtra*, (WP No. 10133 of 2016 Order dated 1 August 2017) the Division Bench of this Court has held in paragraph 6 that it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order and no doubt if an order is obtained by exercising fraud, it would stand vitiated. It is further held in the same paragraph that if earlier Education Officer had granted approval, may be erroneously, the same cannot be made a ground to recall and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out.
- b) This view is then followed in *Ansari Amina Muzhar Ali Vs. State of Maharashtra* (WP No.1380/2019 (O.S.) Order dated 30 March 2021) by another Division Bench of this Court, adding that these factors of fraud, mis-representation etc. need not be restricted to acts of teachers and management alone but can also include collusion by the authorities.

- c) In the case of *Ashwini Yogesh Shete v/s. State of Maharashtra and others* (Writ Petition No. 6897 of 2021 and other petitions, Order dated 20 October 2021), the Division Bench of this Court was considering identical case involving earlier approval by the Education Officer and subsequent refusal by the Deputy Director of Education to enter the name of a teacher in *Shalarth ID*. After considering earlier orders on similar issue, it is held in paragraph 8 that in such a situation where approval is granted to the appointment, the Deputy Director of Education cannot refuse to enter the name in *Shalarth ID*.
- d) In the case of *Abhijit Ashok Waje v/s. The State of Maharashtra (2022 SCC online Bom 2709)*, the Division Bench of this Court, after taking review of earlier orders and considering the purpose of creating and maintaining *Shalarth ID*, has held in paragraph 9 that there has been a consistent view of this Court that if the approval is granted, at the time of making an entry in *Shalarth ID*, the Deputy Director could not have refused to enter the name. It is further held in paragraph 10 that if the State has to review approval granted and set aside the same on the grounds of misrepresentation, fraud etc, separate procedure is contemplated.
- e) In the case of *Amol Baban Sangar (supra)* also, relied upon by the Petitioner, the Division Bench of this Court has held

that once approval is granted by the Education Officer for appointment, the Deputy Director of Education would have no jurisdiction to refuse to enter name of such employee in the *Shalarth* system.

7. In the present case, this settled position of law is ignored by the concerned Education Authorities. No notice alleging ground of fraud, misrepresentation etc. was ever given to the Petitioner. The stand of the Education Officer that the earlier approval was given by 'inadvertence', itself amounts to review in the most casual manner and therefore can not be sustained. To add to this, even the Deputy Director has acted on such unsustainable stand and has refused entry in *Shalarth ID* system. It is simply untenable.

8. In that view of the matter, petition succeeds. Both the impugned orders dated 18 November 2022 and 6 December 2022 are quashed and set aside. Respondent No.2 - Deputy Director of Education, Pune Region, Pune is directed to enter the Petitioner's name in *Shalarth ID* system within a period of 6 weeks from today.

9. Rule is made absolute and writ petition is disposed of in the aforesaid terms. No order as to costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)